

CHAPTER NO. 246

HOUSE BILL NO. 1116

By Representative Shepard

Substituted for: Senate Bill No. 855

By Senator Jackson

AN ACT to amend Tennessee Code Annotated, Title 63, Chapter 8, relative to the practice of optometry.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 8, is amended by adding the following language as a new section thereto:

63-8-124.

It is the public policy of the state that optometrists rendering visual care to its citizens shall practice in an ethical, professional manner; that their practices shall be free from any influences that would interfere with their exercise of professional judgment; that the visual welfare of the patient shall be the prime consideration at all times; and that optometrists shall not be associated with any person or persons in any manner which might degrade or reduce the quality of visual care received by the citizens of this state.

SECTION 2. Tennessee Code Annotated, Title 63, Chapter 8, is amended by adding the following language as a new section thereto:

63-8-125.

(a) A manufacturer, wholesaler, or retailer of ophthalmic materials who leases space to an optometrist shall not, directly or indirectly, control or attempt to control the professional judgment or practice of an optometrist.

(b) As used in this section, the phrase "control or attempt to control the professional judgment or practice of an optometrist" includes, but is not limited to:

(1) Setting or attempting to set the professional fees or hours of an optometrist or the number of patients to be seen by an optometrist;

(2) Restricting or attempting to restrict an optometrist's discretion to schedule appointments at times convenient to the optometrist's patients;

(3) Terminating or threatening to terminate a lease with an optometrist as a means of controlling or attempting to control the professional judgment or practice of the optometrist;

(4) Sharing with an optometrist telephone lines or other telecommunication services; provided, however, nothing in this section shall preclude an optometrist from entering into a business arrangement involving the delegation of clerical tasks and functions to persons who are not employees of the optometrist but are under the optometrist's general supervision, so long as the business arrangement is in compliance with state and federal law;

(5) Employing or contracting for the services of an optometrist if part of the optometrist's duties involve the practice of optometry (except that an optometrist may legally contract to provide optometric services to the employees of the manufacturer, wholesaler, or retailer);

(6) Paying an optometrist for a service not provided;

(7) Restricting an optometrist's access to leased office space when the optometrist needs such access to provide emergency care to a patient;

(8) Restricting or attempting to restrict the scope of practice of the optometrist in a way that prevents the optometrist from providing the full range of diagnostic and treatment services authorized by Tennessee law; provided, however, that a manufacturer, wholesaler, or retailer of ophthalmic materials who leases space to an optometrist may restrict that optometrist from offering spectacles, lenses, or frames to his or her patients or to the public in the leased space in direct competition with the lessor;

(9) Limiting or attempting to limit the optometric services and ophthalmic materials that the optometrist may prescribe to his or her patients or the information which may be disseminated to his or her patients or the public by the optometrist; and

(10) Limiting or attempting to limit the optometrist's exercise of independent professional judgment or responsibility in any way.

(c) A lease between an optometrist and a manufacturer, wholesaler, or retailer of ophthalmic materials must comply with all the following provisions:

(1) The lease must not contain any provision through which the manufacturer, wholesaler, or retailer of ophthalmic materials controls or attempts to control the professional judgment or practice of the optometrist; and

(2) The leased space must be large enough to include a secure location for storage of confidential patient records. Representatives of the lessor are only permitted on the lessee's premises on reasonable notice and at times not disruptive to the practice of the optometrist. Lessor shall have no access to confidential patient information except in compliance with state and federal law.

(d) The board may promulgate rules and regulations pursuant to title 4, chapter 5, to implement the provisions of this section.

(e) The board may file an action in an appropriate court to enjoin any violation of this section by any manufacturer, wholesaler, or retailer of ophthalmic materials. If successful in establishing a violation or violations of this section, the board may recover court costs and reasonable attorney's fees.

(f) An optometrist may file an action in an appropriate court to enjoin a manufacturer, wholesaler, or retailer of ophthalmic materials from controlling or attempting to control the professional judgment or practice of that optometrist. If successful in establishing a violation or violations of this section, the optometrist may also recover any actual damages sustained by the optometrist, as well as court costs and reasonable attorney's fees.

(g) The attorney general may file suit in an appropriate court to enjoin any violation of this section by a manufacturer, wholesaler, or retailer of ophthalmic materials. If successful in establishing a violation or violations of this section, the attorney general may also recover a civil penalty not to exceed one thousand dollars (\$1,000) per day for each violation of this section, plus court costs and reasonable attorney's fees.

SECTION 3. This act shall take effect on July 1, 2003, the public welfare requiring it. This act shall apply to leases entered into or renewed after July 1, 2003.

PASSED: May 19, 2003


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 3rd day of June 2003


PHIL BREDEZEN, GOVERNOR